

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:18-cv-00302-FDW-DSC

THIS MATTER is before the Court on Plaintiff Lisa Antoine’s “Motion in Support of Entry for Default Judgment” (Doc. No. 7). The record is clear. Upon service of summons and the complaint, counsel for Defendant Elliotte Manor obtained an extension of time, until July 24, 2018, to file a responsive pleading. (Doc. No. 5). On July 24, 2018, Defendant filed its answer. On July 25, 2018, Plaintiff filed her motion requesting default claiming Defendant had yet to file a responsive pleading. (Doc. No. 7).

Fed. R. Civ. P. 55(a) provides: “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.” However,

where a defendant appears and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default, in accordance with the policy of allowing cases to be tried on the merits. In the final analysis, default judgments are not favored in the law, and the entry of such a judgment is only appropriate where there has been a clear record of delay or contumacious conduct.

Wendt v. Pratt, 154 F.R.D. 229, 230 (D. Minn. 1994) (internal quotation marks and citations omitted) (cited in 10A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2682 (3d ed. 2006)).

Applying these same principles to the facts at bar, the Court finds no justification for entry of default against Defendant. Defendant has plead as provided by the Federal Rules of Civil Procedure. Further, Plaintiff consented to the extension of time, and Defendant certified service of the answer on Plaintiff.

IT IS THEREFORE ORDERED that Plaintiff's Motion in Support of Entry for Default Judgment" (Doc. No. 7) is hereby DENIED.

IT IS SO ORDERED.

Signed: August 28, 2018



Frank D. Whitney
Chief United States District Judge

